



Final Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22 and 18 VAC 50-30
Regulation title	Board for Contractors Regulations AND Board for Contractors – Tradesman Regulations
Action title	Amend
Document preparation date	October 22, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulations will increase fees for the Contractors Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee increases became effective in January 2003. The Board had incurred a substantial deficit at that time due to delays in approval of the new fees, as well as higher than anticipated costs for Enforcement activities, Information Systems development costs, and transfers to the General Fund of the Commonwealth. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the Board's deficit will continue to increase, and the Department will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a

proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 19, 2004, the Board for Contractors adopted as final the attached Board for Contractors Regulations AND Board for Contractors – Tradesman Regulations

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505, shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department..."

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly.
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

§ 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is left to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Board for Contractors. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a contractor or tradesman license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner.

This could provide an opportunity for a dishonest contractor, waiting for action to be taken by the board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department's authorized special revenue appropriation.

The Board for Contractors has no other source of revenue from which to fund its operations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The existing regulations are being amended to increase the fees applicable to several licensing items.

18 VAC 50-22-100. Fees.

The fee for Class C initial licensure is increased from \$125 to \$150.

The fee for Class B initial licensure is increased from \$150 to \$175.

The fee for Class A initial licensure is increased from \$175 to \$200.

The fee for the declaration of a designated employee at the time of application is increased from \$30 to \$40.

The dishonored check fee will be removed from the regulations.

18 VAC 50-22-140. Renewal fees.

The fee for Class C renewal is increased from \$100 to \$110.

The fee for Class B renewal is increased from \$135 to \$150.

The fee for Class A renewal is increased from \$150 to \$165.

The dishonored check fee will be removed from the regulations.

18 VAC 50-22-170. Reinstatement fees.

The fee for Class C reinstatement is increased from \$225 to \$260.

The fee for Class B reinstatement is increased from \$285 to \$325.

The fee for Class A reinstatement is increased from \$325 to \$365.

The dishonored check fee will be removed from the regulations.

The reinstatement period will change from six months to one year.

18 VAC 50-22-250. Fees.

The fee to change a designated employee is increased from \$30 to \$40.

The fee to change a qualified individual is increased from \$30 to \$40.

The fee to add a classification or specialty designation is increased from \$30 to \$40.
The dishonored check fee will be removed from the regulations.

18 VAC 50-30-90. Fees for licensure, certification and examination.

Paragraph B. Dishonored check fee will be removed from the regulations.

Paragraph C. Tradesman license – original fee – by examination.
The fee for an initial tradesman license is increased from \$75 to \$90.

Paragraph D. Tradesman license – original fee – without an examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act.
The fee for an initial tradesman license is increased from \$75 to \$90.

Paragraph E. Commencing July 1, 1995, the Department of Professional and Occupational Regulation will institute a program of issuing tradesmen's cards.
The fee for the card exchange application and processing is increased from \$20 to \$40.

Paragraph F. Commencing July 1, 1998, the Department of Professional and Occupational Regulation will institute a voluntary program of issuing backflow prevention device worker certification cards.
The fee for the card exchange application and processing is increased from \$20 to \$40. The term of certification will be for a period of 24 months.

Paragraph H. Commencing the effective date of the Board's final regulations, the Department of Professional and Occupational Regulation will add the trades of liquefied petroleum gas fitter and natural gas fitter provider to the trades regulated by the Board for Contractors.
The fee for the initial license is increased from \$75 to \$90.

18 VAC 50-30-120. Renewal.

Paragraph B.
The fee for renewal of a tradesman license is increased from \$35 to \$40.
The fee for renewal of a backflow prevention device worker certification card is increased from \$35 to \$40.

18 VAC 50-30-130. Reinstatement.

Paragraph B.
The fee for reinstatement of a tradesman license is increased from \$75 to \$90, in addition to the renewal fee.
The reinstatement fee for a backflow prevention device worker certification card is increased from \$75 to \$90, in addition to the renewal fee.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.
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The primary issue for the proposed fee increase is the Department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Contractors closed the 2000-02 biennium with a deficit of \$930,483 and a Callahan Act percentage of -12.3%. By the close of the 2002-04 biennium the Board is expected to incur a deficit of \$1,473,083 and a Callahan Act percentage of -15.6%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount cited previously. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2004-06 biennium. Otherwise, the Board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The removal of the dishonored check fee from the regulations is in response to the determination by DPOR that the fee is one that should be set by the Agency as a result of the cost of processing dishonored checks. Since this fee is an administration fee not a licensing fee, it should not be in the regulations of a specific Board.

The reinstatement period of regulants issued contractor licenses is being extended from six months to one year. This change brings the Tradesman and Contractor licensing programs into agreement (Tradesman currently has a one year reinstatement period) and, in the opinion of the Board, does not have an adverse affect on the consumer. Extending the reinstatement period to one year will result in less of a burden to the regulant, by extending the time they can continue their license with the payment of a reinstatement fee versus the submission of a new application, while protecting the consumer by providing that the contractor was continually licensed during the reinstatement period (see 18 VAC 50-22-180)

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes have been made to the text of the proposed regulations since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
William Sowers	Not opposed to fee increase provided that DPOR provide for the enforcement of tradesman regulations.	The Tradesman Regulations are currently in the review process and you are encouraged to participate in that review process. The Board adopted proposed regulations that address some of your concerns.
Ronald E. Lushbaugh	Not opposed to fee increase provided that DPOR provide for the enforcement of tradesman regulations. Is concerned that many are not renewing because they do not feel that they need a license. Thinks that if the renewal fee were lowered more people would renew.	The Tradesman Regulations are currently in the review process and you are encouraged to participate in that review process. The Board adopted proposed regulations that address some of your concerns. Changes in fees are made in accordance with the provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and are raised or lowered accordingly.
Butch Vest	Not opposed to fee increase, but is concerned that many electricians are not renewing because prior fee increases. Afraid that if more and more decline to renew that there may be a shortage of licensees. Suggests hiring retired electricians to check to make sure that licensed tradesman are on jobsites.	The Tradesman Regulations are currently in the review process and you are encouraged to participate in that review process. The Board adopted proposed regulations that address some of your concerns.
Luther (Brant) Dunn	Not opposed to fee increase provided the money is used to enforce the regulations and statutes currently in place if DPOR would enforce the regulations and statutes currently in place regarding the licensure of tradesman.	The Tradesman Regulations are currently in the review process and you are encouraged to participate in that review process. The Board adopted proposed regulations that address some of your concerns.
Paul Small	Would like the Board to implement stricter criteria and special licensing of septic installers. Mr. Small indicates that his firm is constantly underbid by firms that are not properly licensed, thinks that it would be a good way to get something for the fees that he pays.	The Contractor Regulations are currently in the review process and you are encouraged to participate in that review process. The Board does not have the authority to implement a licensing program, as you have suggested for septic installers. Only through the passage of legislation can a program be implemented.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 50-22-100		Class C Initial License Fee \$125 Class B Initial License Fee \$150 Class A Initial License Fee \$175 Declaration of Designated Employee \$30	Class C Initial License Fee \$150 Class B Initial License Fee \$175 Class A Initial License Fee \$200 Declaration of Designated Employee \$40
18 VAC 50-22-140		Class C Renewal \$100 Class B Renewal \$135 Class A Renewal \$150	Class C Renewal \$110 Class B Renewal \$150 Class A Renewal \$165
18 VAC 50-22-170		Class C Reinstatement \$225 Class B Reinstatement \$285 Class A Reinstatement \$325 Reinstatement period of 6 months	Class C Reinstatement \$260 Class B Reinstatement \$325 Class A Reinstatement \$365 Reinstatement period of 1 year
18 VAC 50-22-250		Change of Designated Employee \$30 Change of Qualified Individual \$30 Addition of Classification or Specialty \$30	Change of Designated Employee \$40 Change of Qualified Individual \$40 Addition of Classification or Specialty \$30
18 VAC 50-30-90 C		Tradesman, original, by exam \$75	Tradesman, original, by exam \$90
18 VAC 50-30-90 D		Tradesman, original, without exam \$75	Tradesman, original, without exam \$90
18 VAC 50-30-90 E		Tradesman, card exchange \$20	Tradesman, card exchange \$40
18 VAC 50-30-90 F		Tradesman, backflow prevention device worker certification card, exchange \$20	Tradesman, backflow prevention device worker certification card, exchange \$40
18 VAC 50-30-90 H		Liquefied petroleum gas fitter and natural gas fitter, initial licensure \$75	Liquefied petroleum gas fitter and natural gas fitter, initial license \$90
18 VAC 50-30-120 B		Tradesman, renewal \$35 Backflow prevention device worker	Tradesman, renewal \$40 Backflow prevention

		renewal \$35	device worker renewal \$40
18 VAC 50-30-130 B		Tradesman, reinstatement \$75 Backflow prevention device worker, reinstatement \$75	Tradesman, reinstatement \$90 Backflow prevention device worker, reinstatement \$90

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These fee increases are not anticipated to have any significant impact on Virginia's families.